



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

1009 Main Street
Tewksbury, MA 01876

Robert Dugan, Chairman
Len Dunn, Vice Chair
Gerald Kutcher, Clerk
Associate Members:
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES June 30, 2016

The meeting was called to order at 6:30 p.m. by Robert Dugan, Chairman, at the Tewksbury Town Hall. Present at the meeting were Len Dunn and Gerald Kutcher.

Dianne Bartalamia was not in attendance.

Approval of Meeting Minutes – May 26, 2016

MOTION: Mr. Dunn made the motion to approve the May 26, 2016 meeting minutes as presented; seconded by Mr. Kutcher and the motion carried 3-0.

265 Main Street, TMC CF New England, LLC – Variance Extension Request

Present was John Smolak on behalf of TMC CF New England. Attorney Smolak explained that they are requesting a six month extension as the variance that was granted was appealed; however, it was settled out. Attorney Smolak noted that they have applied for a building permit, but it has not yet been received. The hope is to begin construction within the next few weeks.

MOTION: Mr. Dunn made the motion to grant a six month extension to the variance for 265 Main Street, TMC CF New England, LLC; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

NEW HEARING

John Keramaris under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated May 3, 2016. Said property is located at **1899 Main Street**, Assessor's Map 84, Lot 79, zoned Commercial and Heavy Industrial.

Present was Attorney Richard O'Neill, John Keramaris, Attorney Charles Zaroulis, and Edward Johnson, Building Commissioner.

Attorney Zaroulis explained that in 1988, the prior owner of this property went before the ZBA for a variance to construct a building with a restriction that it was to be used for retail business only. In 2005, the same parties as tonight were before the Board for an appeal to a decision

made by the Building Commissioner for the operation of a contractor's yard. The Board denied the application. In 2016, the Building Commissioner made the observation of a business at this location entitled "Imperial Demolition Corporation". A corporation with a registered address of 1899 Main Street. In addition, large sized dumpsters were observed in the rear of the property. Attorney Zaroulis noted that they are not aware of what is being disposed of in the dumpsters and that they could contain asbestos or other hazardous materials nor are they aware of whether permits were obtained for all of the dumpsters.

Attorney Zaroulis reviewed Attorney O'Neill's responses to the Building Commissioner's violation letter and noted that the applicant has not filed an appeal to the State Building Code violation. Attorney Zaroulis noted that the definition of "retail use" is the sale of goods on a retail basis; which does not include wholesale and is the sale of small goods. Attorney Zaroulis noted that Attorney O'Neill has stated that the study done by the engineer stated that the distance from the door and hallway should be more than 100 feet and that this is hearsay evidence. Attorney Zaroulis explained that this is not a court hearing and court rules do not apply.

Mr. Johnson explained that at present, the location has a permit for a tenant fit up for a convenient store. Mr. Johnson noted that when he visited this location he observed the large dumpsters and two gentlemen loading the dumpsters. When asked who they were, they stated they were from the demolition company and had leased out a portion of the building. Photographs of the vehicles and dumpsters were provided to the Board.

Attorney Zaroulis asked Mr. Johnson if he is familiar with the lower level of this building and Mr. Johnson confirmed this and explained that he visited the lower level with the fire department as well as for the previous tenant who had been doing work without a building permit. Mr. Johnson noted that a permit was also not filed for to ensure the location is safe and habitable after that work was done.

Mr. Dunn asked who owns Imperial Demolition and Mr. Keramaris noted Scott Dean.

Mr. Dugan noted that he was on the Board when this matter was before it in 2005 and read the restrictions from the variance aloud. Include in the restrictions are: no overnight parking, no storage in the basement, retail business only and no service or sale of heavy equipment. Mr. Dugan noted that in 2005, the Board voted to uphold the decision of the Building Commissioner and asked why the applicant is now back for the same issue. Attorney Zaroulis explained that this is new issue with a different business and noted that the property was not being used for retail in 2010 and is not currently today either. It was noted that ownership of the property has not changed since 2010.

Mr. Dunn asked if the property is zoned commercial or heavy industrial and Attorney Zaroulis explained that is it commercial with a small portion being heavy industrial.

Attorney O'Neill explained that this is not about a variance from 1988 or whether a hearing or appeal of the Building Commissioner occurred as it has no relevance to what is currently occurring. The applicant believed the property to be zoned for general business as stated in the approval. Attorney O'Neill noted that the restriction states restricted to retail business only and nothing about sales and that they are being sued for what the bylaw allowed for by right for a long time. Attorney O'Neill noted that Imperial has two employees and they each a drive a pickup truck.

Attorney O'Neill reviewed the violation and their responses to same and noted that the variance did not say limit to retail use it states "present occupancy or use...general business". It does not state retail sales; states retail business only. Attorney O'Neill noted that they feel the property is being used for what has been allowed for by right for a long time.

Attorney O'Neill noted that when he saw the two dumpsters he advised them to be removed regardless of whether they are a permitted use or not. The site is empty and there are no dumpsters on the site. Attorney O'Neill provided the Board with photographs and noted that the building is being used for office for business use.

Mr. Keramaris explained that what town counsel was referring to is a Chapter 34 assessment of the building where an engineer from Luna designs came in 2010 and shot some lines inside the building. Mr. Keramaris noted that he is unable to locate the actual assessment, but that this is not part of the record and not a matter before the Board. As a result, they feel it is irrelevant and should not be discussed.

Mr. Dunn asked if any work was done when the new tenant moved and Mr. Keramis responded "no" and explained that the tenant downstairs is the contractor doing the fit out for the upstairs unit. Mr. Dunn asked why the fire department responded there and Mr. Johnson believed they were called there by the tenant and it was noted at that time that a building permit had not been obtained. Mr. Keramaris noted that the tenant downstairs has been there since December, 2015 and that the Building commissioner will not sign off on anything upstairs due to these two issues.

Attorney Zaroulis noted that this is not a complaint against Imperial, it is against the owners of the building. Attorney Zaroulis explained that when the Chinese restaurant moved out, items were taken out without a building permit and noted that the applicant wishes to avoid discussing the new tenant going in without the benefit of a permit. Attorney Zaroulis explained that the area was gutted before and now there is a tenant living there with no safety oversight and that the Building Department is trying to protect the safety of the residents of this town. Attorney Zaroulis explained that the words of the variance are simple "retail use only" and retail is defined as the sale of goods and that the applicant thinks that because they remove the dumpsters it is all set.

Mr. Dugan asked if a new business moves into a building are they are required to get a building permit and Mr. Johnson confirmed this and noted it a tenant fit up permit. 780 CMR Chapter 110.1.

Mr. Dugan noted that a roofing company occupied the space from 1988 to 2005 and ran a contractor's yard. Mr. Keramaris confirmed this. Mr. Dugan asked if the applicant is stating that because the site was a contractor's yard while the roofing company was there that there is no change in use by Imperial moving in. Mr. Keramaris explained that they are saying that because the roofing company had an office space, then Imperial should be allowed to have an office space. Mr. Dugan noted that the dumpsters in the yard make it a contractor's yard not the office as they were not being used for a tenant fit up, renovation, etc. Mr. Dugan asked what the dumpsters are used for as there was three 30 yard dumpsters. Mr. Keramaris noted that they are used for the tenants. Mr. Dunn asked if a permit was obtained for the three dumpsters and Mr.

Keramaris confirmed this. Mr. Dugan requested the permit and asked why it has not been provided. Mr. Keramaris noted that he got rid of the dumpsters and Mr. Dugan asked why they got rid of the dumpsters if there was a permit. Mr. Keramaris explained that the issue is not the dumpsters it is what goes into the dumpsters. Attorney Zaroulis asked if the applicant is aware of what types of materials are being disposed of. Mr. Johnson explained that when he visited the site there were five dumpsters, three allowed by permit of the Board of Health.

Mr. Dunn referenced a permit from May 15, 2015 for 1899 Main Street and Mr. Keramaris noted this is not accurate as they applied in December, 2015.

Attorney O'Neill explained Attorney Zaroulis keeps referring to retail business uses when the language states restricted to retail use only. Mr. Dugan noted that he is having trouble with the uses as well as the contractor's yard and questioned whether a demolition company is a retail use. Attorney O'Neill referenced a document design report from Mr. Johnson done by Luna Design Group that he has not yet seen. Mr. Johnson explained that the last time the applicant came for a permit it was for an asphalt business. They were told that they would require a Chapter 34 Assessment. Mr. Johnson noted that the Luna report was generated by the applicant and provided with the applicant's answer. Attorney O'Neill denied this.

Attorney Zaroulis noted that in 1988, the variance states "retail sales only" and Attorney O'Neill noted it states "retail business only". Attorney Zaroulis explained that if someone wanted to change the language, they would have to come before the board.

Mr. Dugan suggested continuing this matter to see the Board of Health permits for all of the dumpsters at this location and explained that he would not feel comfortable issuing a violation if there are permits for the 30 yard dumpsters. Mr. Keramaris noted the permits just state two dumpsters and that he will provide the permits.

Mr. Dunn noted that he has an issue with the violation for a contractor's yard as the dumpsters are now gone; however, his thought is if there was a permit for the dumpsters they would not be removed. In addition, the business never went to the town when they moved in.

Mr. Johnson noted that had they informed him prior to tonight's meeting that the dumpsters had been removed they would not be here tonight.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

**MOTION: Mr. Dunn made the motion to close the public hearing portion; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER**

**MOTION: Mr. Dunn made the motion in favor of the party aggrieved John Keramaris under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated May 3, 2016. Said property is located at 1899 Main Street, Assessor's Map 84, Lot 79, zoned Commercial and Heavy Industrial; seconded by Mr. Kutcher and the motion failed to carry 1-2. Mr. Dunn and Mr. Kutcher were opposed.
DUGAN, DUNN, KUTCHER**

MOTION: Mr. Dunn made the motion in favor of the Building Commissioner in the matter of John Keramaris under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated May 3, 2016. Said property is located at 1899 Main Street, Assessor's Map 84, Lot 79, zoned Commercial and Heavy Industrial; seconded by Mr. Kutcher and the motion carried 2-1. Mr. Dugan was opposed.
DUGAN, DUNN, KUTCHER

Saatry Jonnalagadda for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct an addition onto the existing dwelling as shown on plans filed with this Board. Said property is located at **307 Old Boston Road**, Assessor's Map 34, Lot 23, zoned Commercial.

Present was Dick Cuoco on behalf of the applicant. Mr. Cuoco explained that this location has frontage on Main Street and Old Boston Road. There is approximately three acres of land and large portions is a wetland. Mr. Cuoco explained that the applicant went before the Conservation Commission to see if they could obtain relief from the 50 foot no build zone. Mr. Cuoco referenced "Sheet 2" and showed the outlined area on the plan they are prohibited from building along with a map showing what area is available to build upon. Mr. Cuoco explained that they requested relief to put the building within the 50 no build area as it says in the bylaw that if there are conflicts with financial expectations of the property then they are entitled to a waiver. The applicant's wife currently has a dental business in town and would like to relocate to this location. The existing structure would require an addition for the business to function. Mr. Cuoco explained that the Conservation Commission suggested moving outside of the 25 foot no disturb. In order to do this, they need to try to move the building closer to Old Boston Road. Mr. Cuoco discussed the unique shape and typography of this location and explained that they are asking the Board to allow the building to be 16 feet off the lot; which is the same as the existing building. Mr. Cuoco explained that from the applicant's property, one would need to go approximately 3/10 of a mile until you reach another building. As a result, this will not be impeding traffic any further. Mr. Cuoco explained that in order to further mitigate any disturbance of the land, the engineers tested the soil and determined that the soil would allow for porous pavement would work at this site. The total building is approximately 2,600 square feet and the driveway is not in conflict with the rear driveway of the retail center.

Mr. Dunn asked if the existing structure will remain and Mr. Cuoco confirmed this.

Mr. Cuoco noted that some of the 25 foot no disturb has already been disturbed as the property is rather old.

Mr. Dunn asked if a sidewalk will be required. Mr. Cuoco explained that the Planning Board may require this and that this a three step process with the Zoning Board, Conservation Commission, and Planning Board. The applicant went before the Conservation Commission informally for a request for determination. The Conservation Commission felt that the new building should be kept as far away from the wetlands as possible regardless of the existing building.

Mr. Kutcher asked if there is a possibility of a medical marijuana dispensary at this location and Mr. Cuoco explained that this is a different use.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Kutcher made the motion to close both parts of the hearing; seconded by Mr. Dunn and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

MOTION: Mr. Kutcher made the motion to approve Saatry Jonnalagadda for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct an addition onto the existing dwelling as shown on plans filed with this Board. Said property is located at 307 Old Boston Road, Assessor's Map 34, Lot 23, zoned Commercial; seconded by Mr. Dunn and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

Katie McSheehy for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to install pool, a shed dormer to the sloped roof and second story to existing breezeway as shown on plans filed with this Board. Said property is located at **81 South Street**, Assessor's Map 94, Lot 153, zoned Residential.

Present was Kevin and Katie McSheehy of 81 South Street. The applicant is proposing to install a 21 foot above ground pool as well as to connect the second story of the existing addition done approximately 10 years ago.

Mr. Dugan asked if the footprint of the building is being changed and Ms. McSheehy noted that it is not. Mr. Dugan asked if the property is an existing nonconforming lot and Ms. McSheehy confirmed this and noted that the house is approximately 5 feet from South Street. Mr. Dugan noted that the front yard setback is 4.9 feet and the side yard setback is 11.2 feet. Ms. McSheehy explained that there is a paper road behind them; which is the problem with the pool as there would have to be 25 feet from both South Street and the paper road. The applicant is requesting 20 feet from each side.

Mr. Dunn asked what work was done in 2004 and Ms. McSheehy explained that they constructed a two car garage with living space above. The garage is connected to the first floor of the home by a breezeway. By adding a second floor above, this will allow second floor access through the existing breezeway.

Mr. Dugan opened the hearing to the public.

Steve Marchant of 76 South Street came forward and noted that he has been a neighbor of the McSheehy's for many years and the addition they did fits well. Mr. Marchant noted that he feels they have been doing a great job expanding their property for their growing family. It was noted that Mr. Marchant's home is located directly across the street from this property.

Richard Diorio of 88 South Street came forward and noted that he also lives across the street. Mr. Diorio noted that he also feels that they have been doing a great job with the property and have been an asset to the neighborhood.

MOTION: Mr. Kutcher made the motion to close both parts of the hearing; seconded by Mr. Dunn and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

MOTION: Mr. Dunn made the motion to approve Katie McSheehy for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to install pool, a shed dormer to the sloped roof and second story to existing breezeway as shown on plans filed with this Board. Said property is located at 81 South Street, Assessor's Map 94, Lot 153, zoned Residential for a 21 foot above ground pool as well as the additional items filed for with this Board; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

Willard D. Perkins for Doris Proctor for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw to raze the existing structure and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at **11 Russell Street**, Assessor's Map 82, Lot 180, zoned Residential.

Present was Willard D. Perkins, 28 Andover Street, Andover, MA. Mr. Perkins explained that there is an existing, dilapidated dwelling that was constructed by the Proctor family in the 1950's. They are proposing raze the existing structure and construct a new dwelling. Mr. Perkins explained that that is a grandfathered lot as there is an existing dwelling. However, there is an issue as to whether there was a change in the lot during the grandfathered use. Mr. Perkins explained that the neighbor found that their property encroached onto this property. This was corrected in 1971. The question then became whether there was a change during the ownership of grandfathered lot. Mr. Perkins argument is that because the plan was properly signed by the Planning Board in 1971, he feels the transfer was done legally. The Building Commissioner informed that applicant that he would feel more comfortable if they came before the Board. Mr. Perkins noted that the existing dwelling does encroach into the existing right of way.

Mr. Dugan asked why the matter went before the Planning Board and Mr. Perkins noted that he is not sure. Mr. Dugan noted that the agenda states a request from Section 4130 and Mr. Perkins noted that the application and the Building Commissioner's letter both state Section 4120. Discussion took place on whether the correct section is 4120 as it directs to other areas of the zoning bylaws. Mr. Dugan noted that the Building Commissioner has specifically stated Section 4120; which states that the lot did not change and that no permit shall be issued until the lot conforms with that bylaw.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Kutcher made the motion to close the public hearing portion; seconded by Mr. Dunn and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

MOTION: Mr. Dunn made the motion to approve Willard D. Perkins for Doris Proctor for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw to raze the existing structure and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at 11 Russell Street, Assessor's Map 82, Lot 180, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

Old Business

There was no old business.

New Business

Mr. Dugan noted that the Board is still in need of a new member. Anyone interested should contact the Board of Selectmen's office.

Adjournment

MOTION: Mr. Kutcher made the motion to adjourn; seconded by Ms. Bartalamia and the motion carried 3-0.

Approved: September 29, 2016

***List of Documents for 6/30/2016 Agenda
Documents can be located at the Community Development Office***

Approval of Minutes – May 26, 2016

265 Main Street, TMC CF New England, LLC
Request for Extension of Variance

- Letter dated 6/16/16 fr Attorney Smolak w/attachments.

NEW HEARINGS

- 6:30 John Keramaris** under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated May 3, 2016. Said property is located at **1899 Main Street**, Assessor's Map 84, Lot 79, zoned Commercial and Heavy Industrial.
- Application packet dated 5/31/16.
 - Email dated 6/28/16 from Rick O'Neill from John Keramaris re: Chapter 34 Assessment Emails.
- 6:30 Saatry Jonnalagadda** for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct an addition onto the existing dwelling as shown on plans filed with this Board. Said property is located at **307 Old Boston Road**, Assessor's Map 34, Lot 23, zoned Commercial.
- Application packet received 6/8/16.
 - Copy of Exhibit Plan, Map 34, Lot 23, Buildable Area Map, 307 Old Boston Road; sheet 3 of 3; prepared by Woodland Design; prepared for Saatry Jonnalagadda.
- 6:30 Katie McSheehy** for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to install pool, a shed dormer to the sloped roof and second story to existing breezeway as shown on plans filed with this Board. Said property is located at **81 South Street**, Assessor's Map 94, Lot 153, zoned Residential.
- Application packet dated 6/7/16.
- 6:30 Willard D. Perkins for Doris Proctor** for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw to raze the existing structures and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at **11 Russell Street**, Assessor's Map 82, Lot 180, zoned Residential.
- Application packed dated 6/9/16.